

**2013 DRAFTING REQUEST**

**Bill**

Received:	<b>8/28/2013</b>	Received By:	<b>gmalaise</b>
Wanted:	<b>As time permits</b>	Same as LRB:	
For:	<b>Children and Families 261-6588</b>	By/Representing:	<b>Sara Buschman</b>
May Contact:		Drafter:	<b>gmalaise</b>
Subject:	<b>Children - abuse and neglect</b>	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**  
 Requester's email: **sara.buschman@wisconsin.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Confidentiality of unsubstantiated child abuse reports

**Instructions:**

See attached--provide for confidentiality of unsubstantiated child abuse reports for purposes of background checks

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 9/3/2013	scalvin 9/9/2013	phenry 9/10/2013	_____			
/1	gmalaise 10/16/2013			_____	mbarman 9/10/2013		
/2	gmalaise 11/14/2013	scalvin 10/29/2013	rschluet 10/30/2013	_____	lparisi 10/30/2013		
/3	gmalaise	scalvin	jfrantze	_____	mbarman		

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	1/7/2014	11/22/2013	11/22/2013	_____	11/22/2013		
/4		scalvin	jfrantze	_____	mbarman	sbasford	
		1/13/2014	1/13/2014	_____	1/13/2014	1/17/2014	

FE Sent For:

<END>

Not  
Needed

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Vers. Drafted

Reviewed  
11/22/2013

Typed  
11/22/2013

Proofed

Submitted  
11/22/2013

Jacketed

Required

FE Sent For:

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01/13/2014

1/4 sac  
01/13/2014

*[Handwritten signature]*  
*[Handwritten signature]* 13

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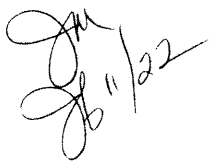
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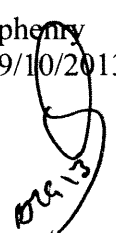

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1?	gmalaise	1 sac 09/09/2013	9/10 ph				
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FE Sent For:

<END>

**Malaise, Gordon**

**From:** Buschman, Sara - DCF <Sara.Buschman@wisconsin.gov>  
**Sent:** Thursday, August 22, 2013 7:16 PM  
**To:** Malaise, Gordon  
**Subject:** Two DCF drafting requests re: confidentiality of unsubstantiated reports and false records and reporting of Fetal Alcohol Spectrum Disorder

Gordon,

I thought I sent these drafting requests over already but can't confirm that via my sent emails so in the event I did not already submit this here are two additional drafting requests. Since they both pertain to some federal requirements I don't know if it makes sense to draft them into one bill or into 2 separate bills. If possible, could I have them drafted both separately and then together as a combined bill? If you have any questions, let me know. Thanks.

Sara

**2. Confidentiality of Unsubstantiated Reports and False Records - 2010 Child Abuse Prevention and Treatment Act (CAPTA) Requirements**

Statute: s. 49.981 (7), s. 48.981 (7) (4p), s. 48.981 (7) (17), and s. 48.685

Issue:

Current statutes address the confidentiality of child protective services records, however, the statutes are silent regarding the federal prohibition of using unsubstantiated or false records for the purposes of employment or other background checks.

Suggested Change:

Amend s. 49.981 (7) to include a general statement about not disclosing unsubstantiated or false records for the purposes of employment or other background checks. This prohibition would also require amendment to s. 48.981 (7) (4p), s. 48.981 (7) (17) and s. 48.685, the "caregiver background check law."

Rationale:

This change is necessary to bring state law into compliance with the federal requirements that were included in the 2010 Child Abuse Prevention and Treatment Act (CAPTA). Failure to comply could result in the loss of federal funding for the child welfare system and the Department of Justice's Juvenile Assistance Program.



State of Wisconsin  
2013 - 2014 LEGISLATURE

IN 913



LRB-3029/1

GMM.../.....

J Sac

AN ACT <sup>general</sup>; relating to: prohibiting the disclosure, for purposes of employment or other background investigations, of child abuse and neglect reports and records that relate to cases in which abuse or neglect has not been substantiated.

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***Analysis by the Legislative Reference Bureau***

Under current law, child abuse and neglect reports and records are confidential and may be disclosed only to certain persons or for certain purposes specified in current law, including: 1) to an agency that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption (licensing or placing agency); 2) to a federal, state, or local governmental unit that has a need for such a report or record in order to carry out its responsibility to protect children from abuse or neglect (child protection unit); or 3) for purposes of a caregiver background investigation.

The federal Child Abuse Prevention and Treatment Act (CAPTA), however, includes as an eligibility requirement for receipt of a grant under that act that a state has in effect provisions requiring the prompt expungement, for purposes of employment or other background checks, of records that relate to child abuse or neglect cases determined to be unsubstantiated or false.

This bill conforms state law to CAPTA by permitting a child abuse or neglect report or record to be disclosed to a licensing or placing agency, to a child protection unit, or for purposes of a caregiver background investigation or any other employment or other background investigation for which such disclosure is authorized by law only if the report or record relates to a case in which child abuse or neglect has been substantiated or, beginning on January 1, 2015, a case in which

FE-54  
a final determination or decision has been made that a specific person has abused or neglected a child.

SECTION 1. 48.981 (7) (a) (intro.) of the statutes is amended to read:

48.981 (7) (a) (intro.) All Except as provided in this paragraph, all reports made under this section, notices provided under sub. (3) (bm), and records maintained by an agency and other persons, officials, and institutions shall be confidential. Reports and records may be disclosed only to the persons specified in subds. 1. to 17., as permitted under pars. (am) to (e), or for purposes of a background investigation under s. 48.685 or 50.065 or any other employment or other background investigation for which such disclosure is authorized by law, except that a report or record may be disclosed to a person specified in subd. 4. or 17. or for purposes of a background investigation under s. 48.685 or 50.065 or any other employment or other background investigation for which such disclosure is authorized by law only if the report or record relates to a case in which abuse or neglect has been substantiated. Subject to this paragraph, reports and records may be disclosed to any of the following persons:

**History:** Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185; 2011 a. 32, 81, 87; 2013 a. 20.

SECTION 2. 48.981 (7) (a) (intro.) of the statutes, as affected by 2013 Wisconsin

Act .... (this act), is amended to read:

48.981 (7) (a) (intro.) Except as provided in this paragraph, all reports made under this section, notices provided under sub. (3) (bm), and records maintained by an agency and other persons, officials, and institutions shall be confidential. Reports and records may be disclosed only to the persons specified in subds. 1. to 17., as permitted under pars. (am) to (e), or for purposes of a background investigation

1 under s. 48.685 or 50.065 or any other employment or other background  
2 investigation for which such disclosure is authorized by law, except that a report or  
3 record may be disclosed to a person specified in subd. 4. or 17. or for purposes of a  
4 background investigation under s. 48.685 or 50.065 or any other employment or  
5 other background investigation for which such disclosure is authorized by law only  
6 if the report or record relates to a case in which ~~abuse or neglect has been~~  
7 ~~substantiated~~ a final determination under sub. (3) (c) 5m. or a final decision under  
8 sub. (3) (c) 5p. has been made that a specific person has abused or neglected a child.  
9 Subject to this paragraph, reports and records may be disclosed to any of the  
10 following persons:

11 **SECTION 3. Effective dates.** This act takes effect on the day after publication,  
12 except as follows:

13 (1) DISCLOSURE OF CHILD ABUSE AND NEGLECT REPORTS AND RECORDS FOR  
14 EMPLOYMENT OR OTHER BACKGROUND INVESTIGATION PURPOSES. The treatment of section  
15 48.981 (7) (a) (intro.) of the statutes (by SECTION 2), takes effect on January 1, 2015.

16 (END)

## Malaise, Gordon

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**From:** Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>  
**Sent:** Wednesday, October 16, 2013 3:34 PM  
**To:** Malaise, Gordon  
**Cc:** Buschman, Sara - DCF  
**Subject:** Changes - CAPTA requirement LRB-3029/1  
**Attachments:** Background check legislation.doc

Gordon, here are some DCF changes to LRB 3029 relating to CAPTA requirements. Please let Sara or myself know if you have any questions.

Thanks again for your help,  
Kimber

### Comments to LRB-3029/1

1. The proposal modifies 48.981(7)(a)(intro) to include language limiting the use/disclosure of confidential information for employment or background checks where the abuse or neglect determination is overturned. Including this limitation in the intro paragraph is confusing and leads to overly restrictive language. For instance, abuse may be substantiated in a foster home by an unknown maltreater. Such information would be relevant for licensing purposes and is currently available to certain licensing agencies under 48.981(7)(a)2, 4p, 13 and 17. The proposed change should also clarify that the limitations on releasing information applies to background checks and does not otherwise limit access to information for agencies that have a broader licensing/investigatory role and are presumed to understand the limitations on using the information.

It may be clearer to add a new provision at 48.981(7)(cp) that addresses limited release of information for purposes of background checks under s. 48.685 or 50.065 or any other employment or background check for which disclosure is authorized by law. Such disclosure shall be limited to the determination that the person has abused or neglected a child.

This new provision would not otherwise limit the release of information to agencies or persons in (7)(a) 1-17.

2. For better clarity, it would be helpful to use cleaner language that makes it clear that DCF only releases a substantiation for a background check until it is overturned on appeal.

CAPTA requires that records used for employment background checks or other background checks be expunged for purposes of background checks in "cases determined to be unsubstantiated or false..." (Note that child protective services agencies can keep any information on substantiated or unsubstantiated reports for risk and safety assessments).

Section 2 of the bill, p. 2 and 3, s. 48.981(7)(a) intro, limits release of information to cases "in which a final determination under sub. (3)(c) 5m. (final agency determination) or a final decision under sub. (3)(c)5p. (final DHA or judicial determination) has been made..." The "or" in this language may be interpreted to allow release of information for cases in which either a final agency determination, a DHA determination or a judicial determination was made, even if a later appeal overturned that determination. The language in s. 48.685(2)(am)4. that is effective on 1/1/15 better clarifies this for release of information for background checks under s. 48.685. We could perhaps use a version of that for release of information for background checks under s. 48.981(7):

4. Information maintained by the department regarding any final determination under s. 48.981 (3) (c) 5m. or, if a contested case hearing is held on such a determination, any final decision under s. 48.981 (3) (c) 5p. that the person has abused or neglected a child.

#### CAPTA state plan requirements

##### **42 USC 5106a(b)(2) Contents**

A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including—

42 USC 5106a(b)(2)(xii) provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment;

3. A distinction should be made between releasing a *determination of child abuse and neglect* for a *background check* and more general information that is released to authorized persons in order to prevent or treat child abuse or neglect. For example, child welfare adoption and licensing agencies are given more general CPS information under 48.981(7)(a)4p. as it may relate to licensing concerns independent of an abuse determination.

A background check under Title IV-E refers to checking a child abuse registry – 42 USC 671(a)(20)B. Generally a registry merely provides information as to whether or not a person has been substantiated for abuse or neglect of a child. CAPTA federal guidance states a concern regarding public disclosure of CPS information for background checks, but confirms that states generally may *confidentially* release CPS records for activities related to the prevention and treatment of child abuse and neglect, as is provided in s. 48.981(7).

On the other hand, Title IV-E federal guidance encourages states to be as forthcoming as possible with CPS information for licensing purposes in order to permit appropriate decisions about approval of foster or adoptive parents.

We don't want this language to limit our authority to give information out confidentially to prevent or treat child abuse or neglect. Rather this restriction should only apply to background check information, i.e., a response that merely says whether a person has been substantiated for abuse or not.

Consistent with that, we would prefer using the term background check rather than background investigation. A background investigation may suggest a broader inquiry and response than a background check. CAPTA also uses the term background check for this restriction.

We suggest language something like:

A determination that a person has abused or neglected a child can only be released for purposes of a background check under s. 48.685 or 50.065 or other background check for which such disclosure is authorized by law, if it is a final determination under s. 48.981(3)(c)5m. or, if a contested case hearing is held on such a determination, any final decision under s. 48.981(3)(c)5p.

The specific reference to 4. (4p.?) and 17. should be deleted.



Additional comments on LRB-3020/1 (Release of CPS Info for Background Checks)

A distinction should be made between releasing a *determination of child abuse and neglect* for a *background check* and more general information that is released to authorized persons in order to prevent or treat child abuse or neglect. For example, child welfare adoption and licensing agencies are given more general CPS information under 48.981(7)(a)4p. as it may relate to licensing concerns independent of an abuse determination.

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The specific reference to 4. (4p.?) and 17. should be deleted.

I question whether we need an express statement that information can be released for purposes of background checks in (7)(a)intro.



State of Wisconsin  
2013-2014 LEGISLATURE

IN 10/17



LRB-3029/1

GMM:sac:ph

9 (2) RMR

2013 BILL

1 AN ACT <sup>gen act</sup> to amend 48.981 (7) (a) (intro.) and 48.981 (7) (a) (intro.) of the statutes;  
2 relating to <sup>stays</sup> prohibiting the disclosure, for purposes of employment or other  
3 background investigations, of child abuse and neglect reports and records that  
4 relate to cases in which abuse or neglect has not been substantiated


*Analysis by the Legislative Reference Bureau*

\* Under current law, child abuse and neglect reports and records are confidential and may be disclosed only to certain persons or for certain purposes specified in current law, including: 1) to an agency that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption (licensing or placing agency); 2) to a federal, state, or local governmental unit that has a need for such a report or record in order to carry out its responsibility to protect children from abuse or neglect (child protection unit); or 3) for purposes of a caregiver background ~~investigation~~ <sup>check</sup>

The federal Child Abuse Prevention and Treatment Act (CAPTA), however, includes as an eligibility requirement for receipt of a grant under that act that a state has in effect provisions requiring the prompt expungement, for purposes of employment or other background checks, of records that relate to child abuse or neglect cases determined to be unsubstantiated or false.

This bill conforms state law to CAPTA by permitting a child abuse or neglect report or record to be disclosed to a licensing or placing agency, to a child protection unit, or for purposes of a caregiver background investigation or any other employment or other background investigation for which such disclosure is

**BILL**

 authorized by law only if the report or record relates to a case in which child abuse or neglect has been substantiated or, beginning on January 1, 2015, a case in which a final determination or decision has been made that a specific person has abused or neglected a child.

1        **SECTION 1.** 48.981 (7) (a) (intro.) of the statutes is amended to read:

2        48.981 (7) (a) (intro.) All Except as provided in this paragraph, all reports made  
3        under this section, notices provided under sub. (3) (bm), and records maintained by  
4        an agency and other persons, officials, and institutions shall be confidential. Reports  
5        and records may be disclosed only to the persons specified in subds. 1. to 17., as  
6        permitted under pars. (am) to (e), or for purposes of a background investigation  
7        under s. 48.685 or 50.065 or any other employment or other background  
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9        record may be disclosed to a person specified in subd. 4. or 17. or for purposes of a  
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12       if the report or record relates to a case in which abuse or neglect has been  
13       substantiated. Subject to this paragraph, reports and records may be disclosed to  
14       any of the following persons:

15        **SECTION 2.** 48.981 (7) (a) (intro.) of the statutes, as affected by 2013 Wisconsin  
16        Act .... (this act), is amended to read:

17        48.981 (7) (a) (intro.) Except as provided in this paragraph, all reports made  
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## BILL

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4 other background investigation for which such disclosure is authorized by law only  
5 if the report or record relates to a case in which abuse or neglect has been  
6 substantiated a final determination under sub. (3) (c) 5m. or a final decision under  
7 sub. (3) (c) 5p. has been made that a specific person has abused or neglected a child.  
8 Subject to this paragraph, reports and records may be disclosed to any of the  
9 following persons:

10 **SECTION 3. Effective dates.** This act takes effect on the day after publication,  
11 except as follows:

12 (1) DISCLOSURE OF CHILD ABUSE AND NEGLECT ~~REPORTS AND RECORDS~~ FOR  
13 EMPLOYMENT OR OTHER BACKGROUND INVESTIGATION PURPOSES. The ~~treatment~~ of section  
14 ~~48.981 (7) (a) (intro)~~ of the statutes ~~by SECTION 2~~, takes effect on January 1, 2015.

15 (END)

48.981 (7) (cp)  
48.981 (7) (cp)

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3029/2ins  
GMM.....

(INSERT 1-4)

1 prohibiting the disclosure of a determination that a person has abused or  
2 neglected a child for purposes of an employment or other background check when  
3 that abuse or neglect has not been substantiated.

(END OF INSERT)

(INSERT 3-9)

X

4 **SECTION 1.** 48.981 (7) (cp) of the statutes is created to read:

5 48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a  
6 determination that a person has abused or neglected a child for purposes of a  
7 background check under s. 48.685 or 50.065 or any other employment or other  
8 background check for which release of such a determination is authorized by law only  
9 if that determination substantiates that the person has abused or neglected the  
10 child.

11 **SECTION 2.** 48.981 (7) (cp) of the statutes, as created by <sup>2013 Wisconsin Act 111</sup> this act, is amended to  
12 read:

13 48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a  
14 determination that a person has abused or neglected a child for purposes of a  
15 background check under s. 48.685 or 50.065 or any other employment or other  
16 background check for which release of such a determination is authorized by law only  
17 if that determination substantiates is a final determination under sub. (3) (c) 5m.  
18 that the person has abused or neglected the child or, if a contested case hearing is

- 1 held on such a determination, is a final decision under sub. (3) (c) 5p. that the person  
2 has abused or neglected the child.

(END OF INSERT)

(INSERT A)

ve

\* This bill conforms state law to CAPTA by permitting a determination that a person has abused or neglected a child to be disclosed for purposes of a caregiver background check or any other employment or other background check for which release of such a determination is authorized by law only if that determination substantiates that the person has abused or neglected the child or, beginning on January 1, 2015, that determination is a final agency determination that the person has abused or neglected the child or, if a contested case hearing is held on such a determination, is a final administrative or judicial decision that the person has abused or neglected the child.

(END OF INSERT)

## Malaise, Gordon

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**From:** Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>  
**Sent:** Thursday, November 14, 2013 11:10 AM  
**To:** Malaise, Gordon  
**Cc:** Buschman, Sara - DCF  
**Subject:** Draft review: LRB -3029/2 Topic: Confidentiality of unsubstantiated child abuse reports

Gordon, we have some additional changes to LRB 3029. Let me know if you have any additional questions.

Thanks,  
Kimber

LRB-3029/2 Section 1. , s. 48.981(7)(cp) (eff. before 1/1/15) currently says that a determination can be released for a background check "only if that determination substantiates that the person has abused or neglected the child."

Current language in the caregiver background check law, s. 48.685(2)(b), says the entity must obtain "information maintained by DCF regarding any substantiated reports of child abuse or neglect against the person" and (4m)(b) generally bars employment or licensing if the entity knows or should know "That a determination has been made under s. 48.981(3)(c)4. that a person has abused or neglected a child." Determinations under (3)(c)4. are determinations made before any appeal opportunity.

Therefore, recommended changes to LRB-3029/2 Section 1 - should be clarified to state that a determination can only be disclosed or released for a background check if the determination has not been overturned on appeal.

Recommended changes to LRB-3029/2 for both Section 1 and Section 2., s. 48.981(7)(cp) (eff. before and after 1/1/15), shall include a statement that nothing in this subsection shall prevent the disclosure of reports and records to agencies and entities to whom reports and records can be released by law to assist in future risk or safety assessment.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3029/2

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2013 BILL

PF

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- 1 AN ACT *to amend* 48.981 (7) (cp); and *to create* 48.981 (7) (cp) of the statutes;  
2 **relating to:** prohibiting the disclosure of a determination that a person has  
3 abused or neglected a child for purposes of an employment or other background  
4 check when that abuse or neglect has not been substantiated.

---

***Analysis by the Legislative Reference Bureau***

Under current law, child abuse and neglect reports and records are confidential and may be disclosed only to certain persons or for certain purposes specified in current law, including: 1) to an agency that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption (licensing or placing agency); 2) to a federal, state, or local governmental unit that has a need for such a report or record in order to carry out its responsibility to protect children from abuse or neglect (child protection unit); or 3) for purposes of a caregiver background check.

The federal Child Abuse Prevention and Treatment Act (CAPTA), however, includes as an eligibility requirement for receipt of a grant under that act that a state has in effect provisions requiring the prompt expungement, for purposes of employment or other background checks, of records that relate to child abuse or neglect cases determined to be unsubstantiated or false.

This bill conforms state law to CAPTA by permitting a determination that a person has abused or neglected a child to be disclosed for purposes of a caregiver background check or any other employment or other background check for which release of such a determination is authorized by law only if that determination



**BILL**

and that determination has not been reversed or modified on appeal

reversed

except as provided in the bill,

substantiates that the person has abused or neglected the child or, beginning on January 1, 2015, that determination is a final agency determination that the person has abused or neglected the child or, if a contested case hearing is held on such a determination, is a final administrative or judicial decision that the person has abused or neglected the child.

except as provided in this paragraph, nothing

The bill also provides that nothing in the bill prevents

SECTION 1. 48.981 (7) (cp) of the statutes is created to read:

48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a determination that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 or any other employment or other background check for which release of such a determination is authorized by law only

if that determination substantiates that the person has abused or neglected the child

and that determination has not been reversed or modified on appeal.

SECTION 2. 48.981 (7) (cp) of the statutes, as created by 2013 Wisconsin Act ...

(this act), is amended to read:

48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a determination that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 or any other employment or other background check for which release of such a determination is authorized by law only if that determination substantiates is a final determination under sub. (3) (c) 5m. that the person has abused or neglected the child or, if a contested case hearing is held on such a determination, is a final decision under sub. (3) (c) 5p. that the person has abused or neglected the child.

SECTION 3. Effective dates. This act takes effect on the day after publication, except as follows:

~~and that determination has not been reversed or modified on appeal.~~  
Except as provided in this paragraph, nothing in this paragraph prevents the disclosure of a report or record as otherwise permitted under this subsection.

# BILL

1 (1) DISCLOSURE OF CHILD ABUSE AND NEGLECT DETERMINATIONS FOR EMPLOYMENT  
2 OR OTHER BACKGROUND CHECK PURPOSES. The amendment of section 48.981 (7) (cp) of  
3 the statutes takes effect on January 1, 2015.

4 (END)

## Malaise, Gordon

**From:** Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>  
**Sent:** Friday, January 03, 2014 5:28 PM  
**To:** Malaise, Gordon  
**Cc:** Buschman, Sara - DCF  
**Subject:** FW: Proposed response for 3029/3 CAPTA requirements

Hi, Gordon, we have a few final changes for the LRB 3029/3 draft. I included some of the internal rationale for the changes in case that is helpful when making the edits.

Thanks for your help on this,

Kimber

1. Delete the crossed out text in pink below. The pink text refers to other background checks in the law but we don't have any other CPS background statutes other than 48.685 and 50.065. Taking this out will clean up the language and avoid any confusion.
2. Recent amendments for CPS appeals in s. 48.981(3)(c)5r., 48.685 and 50.065, will meet the CAPTA prohibition against using CPS substantiations which are not substantiated or found false for employment or other background checks. With those amendments taking effect in on 1/1/15, part of this legislation (Section 2) does not appear necessary. See below for an example at 48.685(2)(am)4.

Section 1 could be used to address a related problem. What the provisions, like the one in 48.685(2)(am)4, do not make clear is whether prior substantiations can be used after 1 Jan 15. We could use the amendment in this bill draft to provide clear direction that the substantiations made before 1 Jan 15 can still be used, subject to the appeals process. See the changes to Section 1 below. The changes to Section 1 would take effect on 1 Jan 15.

**SECTION 1.** 48.981 (7) (cp) of the statutes is created to read:

48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a determination made prior to January 1, 2015, that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 ~~or any other employment or other background check for which release of such a determination is authorized by law—only if that determination substantiates that the person has abused or neglected the child and that determination has not been reversed or modified on appeal. Except as provided in this paragraph, Nothing in this paragraph prevents the disclosure of a report or record as otherwise permitted under this subsection.~~

~~**SECTION 2.** 48.981 (7) (cp) of the statutes, as created by 2013 Wisconsin Act .... (this act), is amended to read:~~

~~48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a determination that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 or any other employment or other background check for which release of such a determination is authorized by law only if that determination substantiates is a final determination under sub. (3) (c) 5m. that the person has abused or neglected the child or, if a contested case hearing is held on such a determination, is a final decision under sub. (3) (c) 5p. that the person has abused or neglected the child and that determination has not been reversed or modified on appeal. Except as provided in this paragraph, nothing in this paragraph prevents the disclosure of a report or record as otherwise permitted under this subsection.~~

**SECTION 3. Effective dates.** This act takes effect on the day after publication, except as follows:

- (1) DISCLOSURE OF CHILD ABUSE AND NEGLECT DETERMINATIONS FOR EMPLOYMENT

OR OTHER BACKGROUND CHECK PURPOSES. The amendment of section 48.981 (7) (cp) of the statutes takes effect on January 1, 2015.  
(END)

48.685(2)(am)(am) The department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b., a nonclient resident of an entity, and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a child care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a child care provider that is certified under s. 48.651:

48.685(2)(am)1. 1. A criminal history search from the records maintained by the department of justice.

48.685(2)(am)2. 2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

48.685(2)(am)3. 3. Information maintained by the department of safety and professional services regarding the status of the person's credentials, if applicable.

48.685(2)(am)4. 4. Information maintained by the department regarding any final determination under s. 48.981 (3) (c) 5m. or, if a contested case hearing is held on such a determination, any final decision under s. 48.981 (3) (c) 5p. that the person has abused or neglected a child.

Effective date note **NOTE:** Subd. 4. is shown as amended eff. 1-1-15 by 2013 Wis. Act 20. Prior to 1-1-15 it reads:

Effective date text 4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3029/3

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2013 BILL

1 *gen act* AN ACT *a caregiver* ~~to amend~~ 48.981 (7) (cp); and ~~to create~~ 48.981 (7) (cp) of the statutes;  
2 **relating to:** prohibiting the disclosure of a determination that a person has  
3 abused or neglected a child for purposes of ~~an employment or other~~ background  
4 check when that abuse or neglect has not been substantiated.

***Analysis by the Legislative Reference Bureau***

Under current law, child abuse and neglect reports and records are confidential and may be disclosed only to certain persons or for certain purposes specified in current law, including: ~~1) to an agency that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption (licensing or placing agency); 2) to a federal, state, or local governmental unit that has a need for such a report or record in order to carry out its responsibility to protect children from abuse or neglect (child protection unit); or 3) for purposes of a caregiver background check.~~

The federal Child Abuse Prevention and Treatment Act (CAPTA), however, includes as an eligibility requirement for receipt of a grant under that act that a state has in effect provisions requiring the prompt expungement, for purposes of employment or other background checks, of records that relate to child abuse or neglect cases determined to be unsubstantiated or false. *Made before January 1, 2015*

This bill conforms state law to CAPTA by ~~permitting a determination that a person has abused or neglected a child to be disclosed for purposes of a caregiver background check or any other employment or other background check for which release of such a determination is authorized by law only if that determination~~

**BILL**

and may disclose such a determination made on or after January 1, 2015, for those purposes only, as provided in s.b. (3)(c) 5p. ~~Nothing~~

~~substantiates that the person has abused or neglected the child and that~~  
~~determination~~ has not been reversed or modified on appeal ~~or beginning on~~ January 1, 2015, that determination is a final agency determination that the person has abused or neglected the child or, if a contested case hearing is held on such a determination, is a final administrative or judicial decision that the person has abused or neglected the child. The bill also provides that, ~~except as provided in the bill,~~ nothing in the bill prevents the disclosure of a child abuse or neglect report or record as otherwise permitted under current law.

made before January 1, 2015,

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

**SECTION 1.** 48.981 (7) (cp) of the statutes is created to read:

48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a determination that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 ~~or any other employment or other background check for which release of such a determination is authorized by law~~ only if that determination ~~substantiates that the person has abused or neglected the child~~ and that determination has not been reversed or modified on appeal. ~~Except as~~

~~provided in this paragraph, nothing~~ in this paragraph prevents the disclosure of a report or record as otherwise permitted under this subsection.

**SECTION 2.** 48.981 (7) (cp) of the statutes, as created by 2013 Wisconsin Act ... (this act), is amended to read:

48.981 (7) (cp) Notwithstanding par. (a), an agency may disclose a determination that a person has abused or neglected a child for purposes of a background check under s. 48.685 or 50.065 or any other employment or other background check for which release of such a determination is authorized by law only if that determination substantiates is a final determination under sub. (3) (c) 5m. that the person has abused or neglected the child or, if a contested case hearing is held on such a determination, is a final decision under sub. (3) (c) 5p. that the person

**BILL**

1 has abused or neglected the child and that determination has not been reversed or  
2 modified on appeal. Except as provided in this paragraph, nothing in this paragraph  
3 prevents the disclosure of a report or record as otherwise permitted under this  
4 subsection.

5 **SECTION 3. Effective dates.** This act takes effect on the day after publication,  
6 except as follows:

7 (1) DISCLOSURE OF CHILD ABUSE AND NEGLECT DETERMINATIONS FOR EMPLOYMENT  
8 OR OTHER BACKGROUND CHECK PURPOSES. The amendment of section 48.981 (7) (cp) of  
9 the statutes takes effect on January 1, 2015.

10 (END)

**Basford, Sarah**

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**From:** Buschman, Sara - DCF <Sara.Buschman@wisconsin.gov>  
**Sent:** Thursday, January 16, 2014 5:46 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3029/4 Topic: Confidentiality of unsubstantiated child abuse reports

Please Jacket LRB -3029/4 for the ASSEMBLY.

**Sara L. Buschman**  
**Assistant Deputy Secretary**  
Department of Children and Families  
201 East Washington Avenue, Madison, WI 53703  
Phone: 608.261.6588 • Fax: 608.261.6972  
Email: [sara.buschman@wisconsin.gov](mailto:sara.buschman@wisconsin.gov)